

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	Cuid MI0168
CHARTER COMMUNICATIONS)	
)	File No. CSB-A-0671
Appeal of Local Rate Order of the City of)	
Cheboygan, Michigan)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 6, 2002

Released: February 13, 2002

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Charter Communications ("Charter"), the franchised operator of a cable system serving the City of Cheboygan, Michigan, has appealed the rate decision adopted by the City on November 13, 2001. The contested rate order denied the operator's request to increase rates charged for basic service and equipment.¹ The City did not file an opposition to the appeal. For the reasons stated herein, we grant the appeal and remand the rate order to the City for further proceedings.

2. Under the Commission's rules, rate orders issued by local franchising authorities ("LFAs") may be appealed to the Commission.² In ruling on an appeal of a local rate order, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision provided there is a reasonable basis for that decision, and will reverse a franchising authority's decision only if the franchising authority unreasonably applied the Commission's rules in its local rate order.³ If the commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the cases consistent with the Commission's decision on appeal.⁴

¹ Appeal of Local Rate Order (December 12, 2001); Attachment A, Letter from Scott E. McNeil, City Manager, to Denise M. Jones, Director, Charter Communications, (November 15, 2001).

² 47 C.F.R. § 76.944.

³ See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking in MM Docket No.92-266, 8 FCC Rcd 5631, 5731 (1993) ("*Rate Order*"); See also Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Third Order on Reconsideration, 9 FCC Rcd 4316, 4346 (1994) ("*Third Reconsideration*").

⁴ *Rate Order* at 5732.

3. An operator that wants to increase its BST rate has the burden of demonstrating that the increase is in conformance with the Commission's rules.⁵ In determining whether the operator's rates conform with our rules, a franchising authority may direct the operator to provide supporting information.⁶ After reviewing an operator's rate forms and any other additional information submitted, the franchising authority may approve the operator's rate increases or issue a written decision explaining why the operator's rates are not reasonable.⁷ If the franchising authority determines that the operator's proposed rates exceed the maximum permitted rate ("MPR") as determined by the Commission's rules, it may prescribe a rate different from the proposed rate or order refunds, provided that it explains why the operator's rate or rates are unreasonable and the prescribed rate is reasonable.⁸

II. DISCUSSION

4. Charter argues that the Commission should reverse the local rate decision because the City has failed to provide a proper written explanation or documentation of its decision disapproving the proposed rate increase. In a one-page letter, dated November 15, 2001, the City Manager notified Charter that the Mayor and City Council, at its meeting on November 13, 2001, unanimously voted to deny the proposed rate of \$13.22 from the current rate of \$11.55.⁹ The letter sent by the City to Charter provides no explanation for this decision.

5. The City must follow the Commission's rate regulations when reviewing an operator's rate filing.¹⁰ As we stated in *Falcon Cable Media*, if a local franchising authority does not dispute the bases for the figures presented in a cable operator's rate forms and has not discovered any mathematical errors in the forms, the LFA should approve the operator's rate as derived from those forms.¹¹ If an LFA rejects an operator's proposed rates, it must issue a written decision affirmatively demonstrating why the rates are unreasonable.¹²

6. We find that the City's denial of Charter's rate increase without explanation does not meet the standards for a written decision under the Commission's rules.¹³ Consequently, we grant the appeal and remand this case to the City for further consideration consistent with our findings.

⁵ 47 C.F.R. § 76.937(a).

⁶ See *Rate Order*, 8 FCC Rcd at 57-18-19; *Third Reconsideration*, 9 FCC Rcd at 4348.

⁷ 47 C.F.R. §76.936; see *Ultracom of Marple Inc.*, 10 FCC Rcd 6640, 6641-42 (CSB 1995).

⁸ See *Century Cable of Southern California*, 11 FCC Rcd 501 (Cab. Serv. Bur. 1955); *TCI of Iowa, Inc.*, 13 FCC Rcd 12020, 12022 (Cab. Serv. Bur. 1998).

⁹ Charter Appeal, Attachment A.

¹⁰ See *TCI of Southeast Mississippi*, 10 FCC Rcd 8728 (Cab. Serv. Bur. 1995), *reconsideration denied on other grounds*, 13 FCC Rcd 11080 (Cab. Serv. Bur. 1998); *Century Cable of Southern California*, *supra*.

¹¹ 13 FCC Rcd 11996, 11998 para. 6 (Cab. Ser. Bur. 1998).

¹² 47 C.F.R. § 76.936; *Rate Order*, 8 FCC Rcd at 5715-5716.

¹³ 47 C.F.R. § 76.936(a), (b); see *Rate Order*, 8 FCC Rcd at 5715; *Falcon Cable Media*, 13 FCC Rcd at 11998.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the Appeal of Local Rate Order filed by Charter Communications, on December 12, 2001 **IS GRANTED** and the local rate order of the City of Cheboygan, Michigan **is REMANDED** to the City for further consideration consistent with the terms of this Memorandum and Order.

8. **IT IS FURTHER ORDERED** that the City of Cheboygan, Michigan shall not enforce matters remanded for further consideration pending further action by the City on those matters.

9. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules. 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau